

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

EARL LEWIS ANDERSON, JR.

PLAINTIFF

V.

CIVIL ACTION NO. 2:05cv1-MTP

RON KING, et al.

DEFENDANTS

Consolidated With

EARL LEWIS ANDERSON, JR.

PLAINTIFF

V.

CIVIL ACTION NO. 2:05cv2174-MTP

DAVID HOLLINGHEAD, et al.

DEFENDANTS

ORDER

THIS MATTER is before the court *sua sponte* in order to clarify and identify plaintiff's remaining claims to ensure the orderly disposition of this matter and to facilitate the preparation of the Pre-Trial Order due to the voluminous pleadings and numerous defendants named in this action.

Plaintiff Earl Lewis Anderson, Jr., proceeding *pro se* and *in forma pauperis*, filed his Complaint [1] pursuant to 42 U.S.C. § 1983 on January 3, 2005.¹ Through his voluminous complaints and amended complaints, and as clarified during his *Spears*² hearing, plaintiff asserted claims for conspiracy, due process violations, denial and/or delay of adequate medical

¹This action has been consolidated with Civil Action No. 2:05cv2174, in which plaintiff filed his Section 1983 Complaint [1] on December 9, 2005. *See* Order Consolidating Cases [122] (consolidating the two cases for all purposes and ordering that all pleadings and filings be filed under Civ. Action No. 2:05cv1).

²*Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

treatment, excessive force, threats, denial of access to the courts, and retaliation, naming approximately seventy-nine (79) defendants.³ The following six (6) defendants were dismissed by Order [31] on January 27, 2006: D. Gray, Unknown Case Manager Lewis, Jerry Rice, Glenn Spann, I. Turner, and Shermandale Wiley.

After conducting a *Spears* hearing on September 6, 2006, the court entered an Order [121] dismissing the following fourteen (14) defendants: Dr. Unknown Blackston, James Davis, R. Denmark, Christopher Epps, B. Everett, Captain Unknown Guess, Warren Hancock, Florence Jones, Daniel Kidd, Timothy Morris, Theresa Seabrook, Emmitt Sparkman, L. Stewart, and Lt. G. West.

On November 9, 2007, the following thirty-three (33) defendants were dismissed by Order [177]: M. Bailey, Timothy Barnes, Katherine Beastley, Cherlie Berry, Betty Bivens, Rita Bonner, Officer Brewer, Officer Butler, Terry Carter, Vickey Chapman, Tara Dailey, Melvin Davis, 2 Unknown ERT Officers, E. Goings, Regina Hancock, Larry Hardy, Hal Hayes, Lt. Henderson, C. Hood, Officer Langley, Richard Lewis, Unknown Captain Lewis, L. Merrit,

³The seventy-nine defendants named in the two consolidated actions include the following: M. Bailey, Timothy Barnes, Katherine Beastley, Lloyd Beasley, Cherlie Berry, Betty Bivens, Dr. Blackstone, Rita Bonner, Dr. Bradley, James Brewer, Officer Brewer, Officer Butler, Terry Carter, Vickey Chapman, William Cuddley, Tara Dailey, Hubert Davis, James Davis, Melvin Davis, Sarah Davis, R. Denmark, Christopher Epps, 2 Unknown ERT Officers, B. Everett, Melinda Ezell, Nurse Gagnon, E. Goings, Adam Graves, Alvin Graves, D. Gray, Captain Guess, Regina Hancock, Warren Hancock, Larry Hardy, Hal Hayes, Lt. Henderson, David Hollinghead, C. Hood, James Johnson, Florence Jones, Daniel Kidd, Bobby King, Ron King, Officer Langley, Don Lewis, Nurse Martha Lewis, Richard Lewis, Case Manager Lewis, Unknown Captain Lewis, William Madden, Dr. May, L. Merrit, Timothy Morris, Daniel Papp, Connie Pierce, Lynda Powell, Dr. K. Quinn, T. Rankin, Nurse Rebecca, D. Revette, Jerry Rice, Theresa Seabrook, Lt. Brenda Sims, Glen Spann, Emmitt Sparkman, Kenneth Stanley, Laura Steward, L. Stewart, I. Turner, M. Turner, Dr. Unknown Turner, Unknown Officer Urbank, Dr. Jerry Welch, Captain D. West, Lt. G. West, Tony White, Travis White, Shemandale Wiley, and Eddie Wolfe.

Connie Pierce, Dr. K. Quinn, Nurse Rebecca, Laura Steward, M. Turner, Unknown Officer Urbank, Captain D. West, Tony White, Travis White, and Eddie Wolfe. Subsequently, the following nine (9) defendants were dismissed by Order [179] dated November 29, 2007: Dr. Bradley, William Cuddley, Sarah Davis, Alvin Graves, Dr. May, T. Rankin, D. Revette, Dr. Unknown Turner, and Dr. Jerry Welch.

At present, **the following seventeen (17) defendants remain in this action:** 1) Lloyd Beasley, 2) James Brewer, 3) Hubert Davis, 4) Melinda Ezell, 5) Nurse Gagnon, 6) Adam Graves, 7) David Hollinghead, 8) James Johnson, 9) Bobby King, 10) Ron King, 11) Don Lewis, 12) Nurse Martha Lewis, 13) William Madden, 14) Daniel Papp, 15) Lynda Powell, 16) Lt. Brenda Sims, and 17) Kenneth Stanley.⁴ Accordingly,

IT IS, THEREFORE, ORDERED that **only the claims or allegations and defendants listed below remain in this action** as set forth in plaintiff's pleadings, and as amended by the sworn testimony given during his *Spears* hearing:⁵

⁴The court is mindful that defendants Bobby King, Nurse Gagnon, and Martha Lewis have a pending motion [183] for summary judgment. Plaintiff was given an extension of time until today to respond to the motion. The fact that the claims against these three defendants are identified in this order as pending does not reflect the opinion of the court that such claims have or do not have merit. The court does note, however, that the conspiracy claim alleged against Bobby King was not addressed in his motion for summary judgment.

⁵*See Hurns v. Parker*, 165 F.2d 24, No. 98-60006, 1998 WL 870696, at *1 (5th Cir. Dec. 2, 1998); *Riley v. Collins*, 828 F.2d 306, 307 (5th Cir. 1987) (stating that plaintiff's claims and allegations made at *Spears* hearing supersede claims alleged in complaint). The allegations are set forth in more detail in the transcript of plaintiff's *Spears* hearing, which was filed in Civil Action No. 2:05cv2174 on October 1, 2007. *See* Docket Entry dated November 1, 2007 in Civil Action No. 2:05cv1.

1. **Lloyd Beasley**⁶ - excessive force: allegedly attacked plaintiff on two or three different occasions in July 2004 and November 2004; he threw plaintiff up against the wall in the mess hall and injured him (Tr. 57-58)
2. **James Brewer** -excessive force: he allegedly tried to beat plaintiff up and get him in lock-down; deliberate indifference to serious medical needs: he allegedly never answered plaintiff's request to refer him to an oral surgeon (Tr. 69-70)
3. **Hubert Davis** - failure to protect: he allegedly assigned Officer Hollinghead and Adam Graves to transport plaintiff in June 2005, even though plaintiff made a complaint with Davis that those same officers attacked him in October 2004 (Tr. 47-48)
4. **Melinda Ezell** - denial of access to the courts: she allegedly denied plaintiff a legal assistance request form and denied him legal assistance, which prevented him from receiving a copy of a pleading that he needed in order to prove that he had stated authority in such pleading, contrary to the judge's ruling (Tr. 92-93)
5. **Nurse Gagnon** - deliberate indifference to plaintiff's serious medical and dental needs: he allegedly threw plaintiff's medical requests in the garbage (Tr. 93-94; Second Amended Complaint [13] at ¶ 24)
6. **Adam Graves** - excessive force: allegedly attacked plaintiff in the courthouse on October 24, 2004, and while in Dr. May's office, Graves allegedly grabbed

⁶Based on the record in other cases pending before the court naming Lloyd Beasley as a defendant, the court understands that Mr. Beasley is now deceased. *See* Civil Action No. 2:07cv15, Docket Entry [64]. However, no suggestion of death was filed in this matter for Mr. Beasley.

plaintiff by the neck and stuck something in his back and threw him against the wall, resulting in neck, back and shoulder injury; denial of access to the courts: allegedly tampered/interfered with plaintiff's paperwork, but he was ultimately able to file the document (Tr. 34-35); cruel and unusual punishment: on June 16, 2005, he allegedly harassed plaintiff the whole way to Dr. May's office; conspiracy; deliberate indifference to serious medical need: he allegedly took plaintiff out of dentist chair and denied him dental treatment (Tr. 39-42)

7. **David Hollinghead** -excessive force: allegedly attacked plaintiff in the courthouse on October 24, 2004, and while in Dr. May's office, Hollinghead allegedly grabbed plaintiff by the neck and stuck something in his back and threw him against the wall, resulting in neck, back and shoulder injury; denial of access to the courts: allegedly tampered/interfered with plaintiff's paperwork, but he was ultimately able to file the document (Tr. 34-35); cruel and unusual punishment: on June 16, 2005, he allegedly harassed plaintiff the whole way to Dr. May's office; conspiracy; deliberate indifference to serious medical need: he allegedly took plaintiff out of dentist chair and denied him dental treatment (Tr. 39-42)
8. **James Johnson**⁷- denial of access to the courts: he allegedly damaged and destroyed plaintiff's paperwork and took his personal address book and calendar where he had written down issues; retaliation: allegedly showed deliberate indifference towards him for filing a lawsuit; allegedly threatened plaintiff's life;

⁷Defendants filed a Suggestion of Death Upon the Record [124] as to James Johnson on February 20, 2008.

deliberate indifference to serious medical need: allegedly denied plaintiff medical treatment—he was in charge of transportation (Tr. 104-05)

9. **Bobby King** - deliberate indifference to serious medical need: allegedly authorized the wrong medication (“psych” and blood pressure pills) for plaintiff, denial of adequate medical treatment (Tr. 43-47); conspiracy: allegedly conspired to get plaintiff beaten down, to deny him dental services and to give him wrong blood pressure medication, allegedly conspired with others to throw manure on plaintiff (Tr. 108-110)
10. **Ronald King** - conspiracy: every time plaintiff saw a dentist, King allegedly conspired/influenced them to say plaintiff refused treatment (Tr. 44); he is allegedly behind the entire conspiracy against plaintiff (Tr. 111)
11. **Don Lewis** - allegedly threatened plaintiff's life; deliberate indifference to serious medical needs: he allegedly ignored plaintiff's complaints about others conspiring to harm him (Tr. 113-115)
12. **Martha Lewis** - deliberate indifference to plaintiff's serious medical needs: allegedly denied plaintiff medical treatment on several occasions and deliberately over-charged plaintiff for visits to discourage him from seeking medical treatment (Tr. 140-42)
13. **William Madden** - conspiracy and denial of due process: Madden allegedly signed his name on false RVR's that he claimed he delivered (Tr. 115-16)
14. **Daniel Papp** - retaliation: he allegedly retaliated against plaintiff for filing an ARP grievance (Tr. 118); other claims against Papp were dismissed by Order

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15. **Lynda Powell** - deliberate indifference to plaintiff's serious medical and dental needs after being contacted in October 2002; conspiracy: allegedly conspired to ignore plaintiff's complaints and injuries (Second Amended Complaint [13] at ¶ 6)
16. **Brenda Simms** - denial of due process: allegedly threatened some witnesses who were going to testify on his behalf at a disciplinary hearing for an RVR (Tr. 125)
17. **Kenneth Stanley** - conspiracy: allegedly conspired with gang members to attack plaintiff; denial of process: allegedly found him guilty at a hearing with no notice, and no real hearing was conducted, and failed to respond to appeal of hearing (Tr. 130).

SO ORDERED this the 29th day of February, 2008.

s/ Michael T. Parker

United States Magistrate Judge